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REMARKS

The original application included claims 1-41, but following a Preliminary Amendment, the pending claims are 1-4, 9-10, 15, 17-18, 20-21, 23-24, 27, 29-31 and 35-37. Of these, claims 1 and 27 are independent. Applicant appreciates the indication of allowability of claims 4, 17-18, 20-21 and 31. Rather than amend these claims to place them in independent form, Applicant has traversed the rejections of their respective base and intervening claims.

Claims 1, 15, 17, 27 and 29 were rejected under obviousness-type double patenting in view of claims 1, 16 and 25 of the issued parent to this application, Patent No. 6,722,735. (Claim 29 was incorrectly identified in the '735 Patent, but it is believed that independent claim 25 was intended). With respect to claims 15, 17 and 29 of this application, none of claims of the '735 Patent recite a slide block attached to the seat bottom. The slide block limitation in claims 15, 17 and 29 of this application are non-obvious improvements over the structure defined in the claims of the issued patent. Thus, it is requested that the double patenting rejection of claims 15, 17 and 29 be withdrawn. Applicant will provide an appropriate Terminal Disclaimer addressing any obviousness-type double patenting issues that remain outstanding following consideration of this response.

Claims 1, 15 and 23-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,046,422 issued to Ambasz. Applicant had previously amended independent claim 1 to indicate that the seat bottom slides in response to deformation of the intermediate portion of the seat member. The intermediate portion is defined as deforming as the seat back pivots. It is believed that Ambasz cannot anticipate amended claim 1 because this reference does not disclose every limitation of the claim 1. In particular, Ambasz does not teach a seat bottom that slides along a bearing surface *in response to deformation of its intermediate portion.*

In addressing this limitation of claim 1, it was stated, without support from the Ambasz patent, that the Ambasz seat bottom (20) slides along a bearing surface in response to deformation of the intermediate portion (119). Rather than cite to language in

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the Ambasz patent to support this conclusory statement, the rationale was given that "this is inherently carried out when the occupant sits in the seat". There was nothing further in the Office Action explaining how the seat bottom inherently slides in response to deformation of the intermediate portion or in response to pivoting of the seat back. However, perhaps more significantly, the very thrust of this conclusory statement is that the movement of the seat bottom is in response to an occupant sitting in the seat, not in response to movement of the seat back or deformation of the intermediate tube. The only way that this statement can be molded to fit the language in Applicant's claim is if the occupant somehow causes deformation of the intermediate tube 119 before sitting on the seat bottom 20, to thereby allow the deformation of the tube to slide the seat bottom. Of course, this can't physically happen, which demonstrates a fundamental flaw of the "inherently carried out" argument for anticipation.

Moreover, this foundation for the rejection was made without support from the Ambasz patent. To the contrary, the intermediate portion 119 of Ambasz is simply intended to cover the exposed working components of the seat. See, col. 7, lines 22-41. It should be clear that the seat back 22 pivots independently of anything that happens to the seat bottom 20. As shown in FIGS. 4A, B, the seat back 22 pivots about the pivot element 80 without causing any movement of the seat back support 72. Likewise, it should be clear that the seat bottom 20 slides along the seat support 36 without causing any movement of the seat support 36. See e.g., col. 4, lines 30-39, 43-48. As Ambasz explicitly states, "The back tilts independently of the seat" (lines 10-11 of the abstract); "... a back support 22 that tilts, independently of the position of the seat" (col. 4, lines 9-11); and "... the embodiments ... include the feature of independent forward and backward movement of the seat and tilting of the back" (col. 9, lines 6-9).

Moreover, Ambasz specifically teaches away from any "inherent" connection between movement of the seat back and bottom and deformation of the intermediate tube 119. In particular, at col. 7, lines 42-52, Ambasz describes adding an elastic covering to the seat, in lieu of a spring return mechanism, to return the seat bottom to its rearward position. At the same time, the Ambasz chair includes a resilient mechanism that automatically restores the seat back to its upright position. See, e.g., col. 7, lines 1-6. If

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the intermediate portion 119 inherently functioned as suggested in the Office Action, there would be no need for the elastic covering proposed by Ambasz to return the seat bottom to its rearward position. For that matter, there would also be no need for the spring return mechanism 42 shown in Ambasz FIGS. 3A-3B because the intermediate portion 119 would automatically slide the seat bottom backward as the seat back automatically returned itself to its upright position.

It is axiomatic that anticipation of a claim under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference," In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Ambasz cannot anticipate claim 1 since every element of claim 1 is not identically shown in Ambasz. It is not enough to say that Ambasz discloses a seat back, a set bottom and a resiliently deformable intermediate portion connecting them. Applicant's claim 1 includes a whereby clause that further defines the structure of the intermediate portion so that this portion deforms when the seat back pivots and the seat bottom slides in response to this deformation. This limitation is neither taught nor suggested by Ambasz. Moreover, Ambasz specifically teaches away from this limitation by deliberately making the movement of its seat back independent of its seat bottom.

In view of these apparent deficiencies in the Ambasz reference, it is believed that claim 1 is allowable. Moreover, claims 2-4, 9-10, 15, 17-18, 20-21, and 23-24 are also in condition for allowance since they depend from an allowable base claim.

The dependent claims also are allowable on their own merits. For instance, claim 10 was rejected as obvious in view of the combination of Ambasz and Perry. Perry was cited for its disclosure of a support bar (30) spanning the seat back. However, contrary to Applicant's claim 10, the bar in Perry includes a curved section (14c) that follows the curvature of the seat back and that terminates at the ends of the bar in linear sections (14T) that are engaged by the clamping brackets (17). In contrast, Applicant's claim requires a linear section with opposite ends angled relative thereto. Perry does not disclose or contemplate this structure. Moreover, there is no suggestion to straighten out

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the curved section (14c) of the bar (30) to meet this limitation in claim 10. Since the support bar in Applicant's claim 10 provides a pivot point for the seat back, the center portion of that support bar is linear. The same requirement is not present in Perry – i.e., the seat back does not pivot about the bar (30). Thus, there is no motivation to change the curved section (14c) to a linear center section to meet the language of Applicant's claim 10. Thus, it is believed that claim 10 is patentable on its own merits over the art of record.

Dependent claim 23 was rejected as anticipated by Ambasz. Claim 23 has been amended to more clearly define this aspect of the claimed invention. In particular, the claim has been amended to indicate that the slack region is recessed before the seat back is pivoted. This amendment avoids any confusion as to which plane of the seat back is considered. The Ambasz chair does not include a slack region as defined in Applicant's claim 23, nor can the Ambasz chair be modified to include this claimed feature. The intermediate tube (119) in Ambasz extends over a right angle frame member (36) so the configuration of the intermediate tube is unchanged, regardless of whether the seat back is pivoted. As can be seen in FIGS. 1 and 9 of Ambasz, the intermediate tube does not include a slack region that is recessed relative to the chair back. Thus, claim 23 is believed to be patentable over the art of record.

The second independent claim 27 was rejected as obvious in view of the combination of Ambasz with Matte. The Matte reference was cited for its disclosure of a one-piece chair shell. There is no motivation in any reference of record to make the recited combination. Moreover, the proposed combination is in complete opposition to the invention disclosed in the Ambasz patent and would render the Ambasz chair entirely non-functional.

As explained above, Ambasz explicitly states that, "The back tilts independently of the seat" (lines 10-11 of the abstract); "... a back support 22 that tilts, independently of the position of the seat" (col. 4, lines 9-11); and "... the embodiments ... include the feature of independent forward and backward movement of the seat and tilting of the back" (col. 9, lines 6-9). The focus of Ambasz was on providing a chair that would allow

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an occupant to assume various comfortable sitting positions. Nearly the entire specification is devoted to describing structures (42 and 70, for instance) that allow for tilting of the seat back independent of backward/forward movement of the seat bottom. Ambasz also describes an intricate structure that allows the rake angle of the seat bottom to change as it slides forward and backward. See, col. 4, lines 40-60. Anything that eliminates this independent movement between seat back and seat bottom is in direct contravention with the expressed purpose of the Ambasz chair design.

Integrating the Ambasz seat back and seat bottom into a one piece shell would eliminate the independent movement and would, therefor entirely frustrate the purpose of the Ambasz chair structure. Even with the hindsight provided by Applicant's disclosure, there is still no motivation that can be found to replace the independent seat back and bottom of Ambasz with a one-piece structure.

Similarly, there is nothing in Matte that suggests modifying its one-piece shell to add all of the structure found in Ambasz. The focus of Matte is on providing a one-piece molded chair shell that permits flexing of the shell back, as shown in FIG. 5. The shell is molded from a composite, polymeric material and forms a joint (13) that permits flexing of the seat back. See, col. 2, lines 24-34. The Matte one-piece shell chair relies upon the seat back being un-restrained so that it can flex back when an occupant sits down. Adding a seat back support member, as required by Applicant's claim 27, would prevent the seat back from flexing, thereby rendering the entire Matte invention superfluous. Similarly, adding a pivot element, again as required by claim 27, would either frustrate the function of the Matte chair or would be itself useless.

Either way, there is no reason or motivation to modify Matte in the manner suggest in the Office Action. The motivation advanced in the Office Action – to provide comfort to the occupant when in the seated position – is unsupported. In other words, there has been no effort made in the Office Action explain how providing a one-piece shell in Ambasz makes the Ambasz chair any more comfortable. As explained in Matte, the one-piece shell chair's comfort hinges on the ability of the chair back to flex – a feature that would be prevented by the introduction of a seat back support member. As

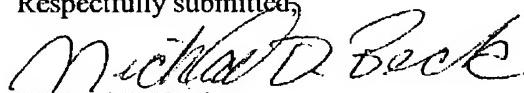
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explained in Ambasz, the chair's comfort relies upon independent movement of the seat back and seat bottom – a feature that would be prevented by making the chair a one-piece shell. Both patents provide chair designs intended to provide comfort to the occupant. There is nothing in the Office Action to support the contention that any comfort at all is provided by combining the Matte one-piece shell with the Ambasz chair structure.

Since both references expressly teach away from their proposed combination, the only remaining motivation is provided by using Applicant's disclosure as a blue print. Only with the benefit of Applicant's claimed invention can one envision the combination of features that is extracted from the cited art and sought to be combined in the Office Action. Of course, hindsight reconstruction of Applicant's claimed invention is an improper basis for a finding of obviousness. Absent hindsight, there are no other grounds for rejection of claim 27, so it is believed that this claim is patentable over the art of record, along with its dependent claims 29-31 and 35-37.

It is believed that the present application is in condition for allowance. Action toward that end is hereby requested. The Examiner is invited to contact the undersigned agent of record if it is believed that a telephonic interview will help address any outstanding issues.

Respectfully submitted,


Michael D. Beck

Attorney for Applicants
Registration No. 32,722

Maginot, Moore & Beck
Bank One Center/Tower
111 Monument Circle, Suite 3000
Indianapolis, Indiana 46204-5115
Phone: (317) 638-2922
Fax: (317) 638-2139